Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review-	)	
Streamlined Contributor Reporting	)	
Requirements Associated with Administration	)	
Of Telecommunications Relay Service, North	)	
American Numbering Plan, Local Number	)	
Portability and Universal Service Support	)	
Mechanisms	)	CC Docket No. 98-171

COMMENTS OF
TELSTAR INTERNATIONAL, INC.

INTRODUCTION

Telstar International, Inc. (Telstar) by its undersigned attorney submits these comments in response to the Commission's December 13, 2002 Report and Order *(Order) and* Second Further Notice of Proposed Rulemaking *(Second Further Notice)*[1] in the above referenced proceedings. In that document, the Commission adopted interim rules governing the collection and contribution of funds to universal service, while also seeking further long-term reforms to the existing universal service funding mechanism. Telstar's Comments herein address specific aspects of the long-term reforms discussed by the Commission in its *Second Further Notice*.

In its *Second Further Notice*, the Commission sought comments on a number of proposals, which would combine aspects of either per-connection, or per-telephone

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[1] *Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 98-171 (December 13, 2002).

number charge with aspects of the existing revenue based funding mechanism. Throughout this proceeding Telstar and others have consistently supported a per-connection based or per line based proposal. Indeed, as the Commission noted in its *Second Further Notice*, many parties agree that the best method for ensuring the long-term viability of the Commission's Universal Service mechanism is a "connection-based" methodology. As has been explained throughout this proceeding, a connections-based methodology has significant advantages over the existing revenue-based methodology. Specifically, under a connection-based mechanism USF contribution will be sustainable and avoid the USF death spiral.[2] In addition, a connections-based assessment is competitively neutral and therefore non-discriminatory,[3] is more efficient than the existing funding mechanism, and minimizes dead-weight loss that is inherent in the existing revenue-based system.[4] Finally, Commenters to this proceeding have also sufficiently demonstrated that a connections-based plan can be structured to fully meet the requirements of the Act.[5]

While Telstar strongly supports replacing the existing revenue-based methodology with either a connections-and-capacity based or telephone number based proposal, Telstar fervently opposes adoption of any of the hybrid proposals being considered by the Commission. These hybrid (or blended) proposals would apply revenue-based assessments to some carriers (or to some service offerings) and per-line charges to others. Telstar opposes these proposals because they diminish or completely

[2] COSUS Comments, dated April 12, 2002, at pp. 36-39
[3] *Id*., 42-44
[4] *Id*., pp. 45-46.
[5] *Id*., p. 82-92.

eliminate the advantages of a connection- based proposal, while retaining all of the negative aspects of the existing system.

DISCUSSION

I. THE COMMISSION SHOULD REPLACE ITS REVENUE BASED METHODOLOGY WITH A FLAT-FEE ASSESSMENT MECHANISM BASED ON EACH CARRIERS' SHARE OF INTERSTATE CONNECTIONS

In the *Second Further Notice*, the Commission recognized that many parties to this proceeding agree that the best method for ensuring the long-term viability of the Commission's universal service mechanism is a "connection-based" contribution methodology.[6] Under a connection-based mechanism USF contribution will be sustainable and avoid the USF death spiral.[7] In addition, a connections-based assessment is competitively neutral and therefore non-discriminatory,[8] is more efficient and minimizes dead-weight loss that is inherent in the existing revenue-based mechanism.[9]

Although there is substantial agreement that implementation of a connections-based mechanism will achieve these benefits and goals, the Commission noted that disagreement remains regarding how a connections based proposal should be applied.[10] Accordingly, the Commission requested comments on specific aspects of three connection-based proposals. First, the Commission requested comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers based on a carrier's combined wholesale and retail interstate telecommunications revenues and a flat charge for each end-user connection

[6] *Second Further Notice*, ¶5.
[7] See *COSUS Comments*, pp. 36-39
[8] *Id*., pp. 42-44
[9] *Id*., pp. 45-46.

depending on the nature and capacity of that connection.[11] Under this first proposal, carriers who provide connections can offset their minimum revenue-based contributions with connection-based assessments.[12] Second, the Commission sought comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers.[13] Providers of non-line based services (*e.*g. dial-around and prepaid calling card services) would continue to be assessed contributions based on revenues.[14] Finally, the Commission sought comments on a proposal to assess providers of switched connections based on their working telephone numbers.[15]

Telstar agrees with the majority of parties to this proceeding that the goals of universal service cannot be sustained via the existing contribution methodology, and therefore supports the Commission's review. Telstar also agrees with the majority of the Commenters that a connection-based contribution mechanism will best ensure the long-term viability of the Commission's universal service based mechanisms as the telecommunications market continues to evolve.[16] Such an approach not only will ensure the long-term viability of Universal Service, but also is fully consistent with the requirements of the Telecommunications Act.[17] Telstar strongly opposes however, any efforts to replace the existing mechanism with any of the hybrid proposals that would assess some providers and/or some services based on revenues, while others would be

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[10] *Id*.
[11] *Second Further Notice*, ¶6
[12] *Id..,* ¶78
[13] Id.
[14] Id.
[15] Id. ¶ 6.
[16] Id., ¶ 4, citing generally, ASCENT Comments; ATA Comments, Bell South Reply Comments; Home et all. Comments, ITAA Comments; Qwest Reply Comments; SBC Comments; Sprint Comments; etc.
[17] CoSUS Comments dated April 22, 2002 at 82-97.

assessed on a per-connection basis. These hybrid proposals are highly discriminatory, inequitable, and would have the effect of severely harming, and perhaps destroying the ability of debit card and dial-around providers to compete in the long distance market with "line based" providers of long distance services such as the traditional IXCs and LECs. These points are discussed in detail below.

A. A Per-Connection Charge Is Consistent With The Telecommunications Act

A connection-based approach to allocating universal service responsibility among carriers is consistent with the Act's requirements and superior to the both the pure revenue based collection approaches and the various hybrid approaches presented in the *Second Further Notice* and discussed below. LEC objections notwithstanding, a per-line charge is consistent with Section 254(b)'s requirement that "all providers of telecommunications services should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service."[18] Furthermore, a per-line assessment is consistent with the Act's requirements that universal service contribution is implemented in a competitively neutral manner. In contrast, the hybrid proposals discussed in the *Second Further Notice* fail to meet statutory muster. All of the variations of the Bell South /SBC proposal and "the minimum contribution plus per line charge" proposal fail to meet the statutory requirement of competitive neutrality, non-discrimination and equity, since each of these proposals severely disadvantages non line-based providers (i.e. dial around and debit card providers) vis-à-vis their connection based competitors of the same services.

[18] 47 U.S.C. §254(b).

II. THE COMMISSION SHOULD NOT ADOPT A HYBRID PROPOSAL COMBINING ASPECTS OF BOTH A CONNECTIONS BASED METHODOLOGY AND A MANDATORY MINIMUM REVENUE-BASED OBLIGATION

A. The Hybrid Proposal is Administratively Burdensome

Although Telstar agrees with the general principal that a connections-based proposal is the most effective means of sustaining the long-term viability of universal service, it strenuously disagrees with the Commission's proposal to impose a mandatory minimum contribution obligation based on revenues on all telecommunications service providers. Indeed, this hybrid proposal is more onerous and less efficient than the existing revenue based mechanism in place today.

Today, carriers calculate their contributions based on a percentage of end-user revenues. Under the hybrid proposal, carriers would continue to calculate their contributions based on a percentage of their revenues but would also be required to collect a per-line fee from their line-based end-users. [19] Carriers would then use the revenues collected on a per-line basis to offset their minimum required revenue-based contribution. Since there is no nexus between per line and per revenue contribution levels, under such a proposal, carriers would have to engage in complex and perhaps impossible financial analysis combining what they project to be able to recover on a per-line basis vis-à-vis a revenue-based surcharge to assure that they are able to meet their total contribution requirements from their customers. Such financial gymnastics are far more complicated than the already burdensome calculations that carriers face today under the current regime. Accordingly, the hybrid proposal not only eviscerates the administrative advantages to be gained by implementation of a per connection-based contribution, it is even less attractive than the complicated and burdensome system under which carriers suffer today.

B. The Hybrid Proposal Is Discriminatory And Will Unfairly Disadvantage Non-Line Based Providers Vis-À-Vis Their Line Based Competitors By Allowing Line-Based Competitors To "Offset" Their Revenue-Based Contribution With Fees Collected On A Per-Line Basis.

Telstar strongly opposes the Commission proposal that would assess carriers based on a percentage of total telecommunications revenue, and then allow carriers who provide end user connections to offset that revenue based assessment with revenues derived from per-line charges. Such a proposal retains the administrative complexity of the existing revenue-based contribution mechanism, while placing non-line based providers at a severe competitive disadvantage. In addition, this proposal discriminates against non-line based providers, and would work to discourage users of dial-around services from continuing to do so.[20] In practice, non-line based carriers would be assessed universal service contributions based on revenues, while line-based providers would be assessed based on their connections so long as they were able to "cover" or at least minimize their revenue based contribution with Commission mandated per line fees. As noted by the International Prepaid Communications Association ("IPCA") in its June 14, 2002 ex parte filing, the largest competitors in the debit card marketplace are the

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[19] Under the hybrid proposal, carriers would calculate their contributions based on a percentage of total interstate telecommunications revenues (i.e. both wholesale and end-user revenues). Under the existing system, contributions are based only on a percentage of end user telecommunications revenues.
[20] *Second Further Notice,* ¶ 78

traditional local exchange carriers including Verizon, Qwest, and SBC. These line-based LECs compete directly with smaller, non-line based debit card providers. Accordingly, if the Commission allowed LECs and other line-based providers of debit card services to offset their minimum contribution levels with fees collected on a per line basis, they will have an overwhelming advantage in the debit card marketplace, since non-line based debit card providers must collect all of their contributions from on their dial-around products, while ILECs who offer line based products and dial-around services will be able to collect their contributions based on a per-line fee, thus undercutting their competitors in the dial-around marketplace.

C. If The Commission Adopts A Total Telecommunications Gross Revenue-Based Component To Its Long-Term Universal Service Regime, It Must Do So Net of Payments to Other Telecommunications Carriers.

Another problem with the hybrid approach discussed above is the proposal to assess the revenue-based portion of the assessment on a carrier's total gross telecommunications revenues. The Commission has previously found that assessing carriers on the basis of total gross revenues has significant problems and distorts competition because it disadvantages resellers. As the Commission has noted in both this proceeding and in its original *Universal Service Order* assessing carrier contributions based on total telecommunications revenues will lead to double counting.[21] The Commission explained double counting using the following example:

> Assuming a 10 percent contribution rate on gross revenues if facilities-based carrier X sells $200.00 worth of telecommunications services directly to a customer, its contribution will be $20.00. If reseller B buys $180.00 worth of wholesale services from Carrier A and B sells the same

[21] *Universal Service Order*, ¶ 845.

> retail services in competition with X after adding $20.00 of value, B would owe a contribution of $20.00 on these $200 worth of services, but B would also be required to recover the portion of the $18.00 contribution that A must make and would likely pass on to B. Therefore, while X would face $200.00 in service costs and $20.00 in support costs, B would face $200.00 in service costs and almost certainly substantially more than $20.00 in support costs. Adding another reseller to the A-B chain would compound this problem.[22]

As the Commission noted, assuming carriers will pass on some portion of the cost of contribution to their customers, the reseller, like B in the above example, that sells to end users will be disadvantage vis-à-vis non-resellers of the same retail service, like X, because of this double counting problem. Accordingly, if the Commission decides to retain some aspect of a revenue based assessment, assessing carriers based on total telecommunications revenues (both wholesale and retail) should not be adopted unless the Commission does so net of payments to telecommunications carriers in order to avoid double counting of revenues. As the Commission has previously determined, the net telecommunications revenues approach is competitively neutral and will avoid double counting.[23] Moving to a net telecommunications revenues methodology will also relieve the burden that the end-user contribution mechanism currently imposes on vendors of telecommunications services which requires them to police their down-stream customers. Accordingly, the Commission chooses to assess contributions based on total telecommunications revenues, it must do so net of payments to other telecommunications carriers.

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[22] *Universal Service Order,* ¶ 845

[23] Id., ¶ 849.

III. THE SBC/BELL-SOUTH PROPOSAL IS DISCRIMINATORY, ADMINISTRATIVELY BURDENSOME, AND SHOULD NOT BE ADOPTED

A. The SBC/Bell South Proposal Discriminates In Favor Of LECs And Other Providers Of Line-Based Long-Distance Services

As originally proposed by SBC/Bell South, a revenue-based assessment would be applied only to IXCs that do not provide the transport portion of a switched connection on a presubscribed basis (e.g. dial-around providers). Carriers that provide the transport and/or switched access portions would be assessed based on their number of connections.[24] The Commission has asked for comments on this proposal as originally described by SBC and Bellsouth, along with a number of variations of this proposal.

Of all of the options proposed thus far, the SBC/BellSouth proposal and variations of that proposal are the most onerous. The SBC/BellSouth proposal in all of its permutations is the most complex to administer, the most biased in favor of one industry segment over another, results in increased transactional costs, is rife with inefficiencies and is the least likely to pass statutory muster. In addition, as the Commission has noted, historical experience with the failed PICC implementation has demonstrated that the sharing of information between IXCs and LECs –which would be required under the SBC/BellSouth proposal is enormously "problematic".[25]

In addition the Bell South/SBC proposal discriminates against non-line based IXCs and their customers. As IPCA noted in its June 6 and June 14 *ex parte* filings, the SBC/BellSouth proposal would base some carriers' assessments on gross revenues while

[24] See SBC Comments at 11.
[25] *Second Further Notice*, ¶88.

all other carriers would pay on a per connection basis.[26] The following example illustrates this point:

> Assume that the single-line connection rate is set at $1.00 and the revenue-based surcharge remained at the existing contribution rate of approximately 7%, as proposed by SBC/BellSouth. Now assume Mrs. Smith in New York purchases her pic'd local and interstate services from line-based Carrier A. She also uses a prepaid calling card product that she purchases from dial-around provider B. Each month Mrs. Smith spends $50.00 on long distance calls over Carrier A, and $50.00 per month on using Carrier B. Under the SBC/Bell South proposal, carrier A, the line-based provider would only have to collect the monthly per connection contribution of ($1.00) while Carrier B would be required to remit ($3.50) to the fund for calls made by Mrs. Smith.

Dial around providers, such as carrier B in the above example would not be able to bear these costs, and would necessarily have to pass these costs on to their customers. Pursuant to the example above Mrs. Smith would be responsible for $4.50 in universal service charges as opposed to a $1.00 fee if she were to exclusively use her PIC'd provider for all of her long distance calling. Certainly this discrepancy would create an incentive for customers to purchase their long-distance service from their line based carriers, and LECs like SBC and BellSouth who have recently entered the long distance markets in many of the areas where they are currently offering local service would be the primary beneficiaries of such an arrangement, to the competitive disadvantage of their non-connection based competitors.

The SBC/BellSouth proposal would also limit the recognized cost savings and benefits available as a result of consumers' ability to choose long distance options other than their local exchange company. The consumer group Telecommunications Research

[26]Letter of Howard Segermark on behalf of the International Prepaid Communications Association, to

and Action Center, recently recognized that, "residential long distance service is becoming increasingly more expensive" and encouraged consumers to "[t]ake advantage of low cost alternatives" such as "prepaid calling cards." (TRAC News Release dated January 28, 2003). Customers who chose these alternatives would be penalized under the SBC/BellSouth proposal because they would be subject to multiple and higher universal service fees, while those customers who choose to purchase service only from their ILECs will be subject to fewer and lesser fees. In the above example, for instance, Mrs. Smith could reduce her overall universal service costs from $4.50 to $1.00 if she chose to purchase all of her interstate calling from her line-based provider. Typically, customers of dial-around and prepaid calling cards are savvy, price sensitive customers who shop around for combinations of providers who can best serve their individual calling needs. For example, it is not unusual for this type of customer to use one provider for access to the PSTN, a second for PIC'd long distance services, and several debit card and 1010 dial around providers to call different destinations both domestically and internationally. Under the SBC/BellSouth proposal, this type of consumer may be assessed four or five revenue-based Universal Service assessments, while a consumer who uses only one provider to handle all of her calling needs would be assessed only one, monthly per-line charge. Such a result would be incongruous with the Commission's goals of maximizing benefits that come from increased telecommunications competition, because it would create incentives for customers to purchase all of their services from their ILEC instead of taking advantage of multiple innovative and customer-tailored options currently available in the market today.

Marlene Dortch, Secretary, Federal Communications Commission, filed June 14, 2002, pp. 2-3.

Additionally, it bears mention that prepaid and dial-around products are most attractive to the poorest members of the community. The SBC/BellSouth proposal would have the perverse effect of burdening the poorest members of the population the most by causing them to pay the highest contribution in universal service fees, and limiting their telecommunications alternatives – results that would directly contradict the goals of both Congress and this Commission to ensure that low income consumers receive quality services at affordable rates, and creating telecommunications “haves” and “have-nots” – such a situation is the antithesis of the central purpose of universal service in the first place.

CONCLUSION

For the reasons expressed above, Telstar International, Inc. recommends that the Commission adopt a connections and capacity based proposal as proposed by CoSUS in this proceeding. The Commission should not adopt an assessment methodology that would include a minimum revenue based requirement offset by a per-connection charge as such a proposal would place dial-around and non-connection based providers at a competitive disadvantage. Further, the Commission should not entertain any of the variations of the SBC/BellSouth proposal, which not only would recreate the untenable administrative quagmire reminiscent of the PICC by requiring carriers to share data, but would also create severe and probably insurmountable competitive disadvantages for non-connection based providers.

Respectfully submitted,

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